

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

March 11, 2010

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii

Board Members:

**SUBJECT: REQUEST FOR APPROVAL OF A MEMORANDUM OF AGREEMENT BETWEEN MAUI LAND AND PINEAPPLE COMPANY, INC. AND THE STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES' NA ALA HELE TRAILS AND ACCESS PROGRAM FOR A PUBLIC SHORELINE ACCESS AND SCENIC OVERLOOK AT MOKULEIA BAY, HONOLUA, MAUI, HAWAII AND TO DEFEND AND INDEMNIFY THE LANDOWNER PURSUANT TO HRS SECTION 198D-7.5**

**SUMMARY:**

This board submittal requests approval of a Memorandum of Agreement (MOA) between Maui Land and Pineapple Company, Inc. (MLP) and the State of Hawaii Department of Land and Natural Resources (DLNR) to renew a cooperative working relationship at Mokuleia Shoreline Access and Scenic Overlook at Mokuleia Bay, Ahupuaa of Honolua, Island of Maui, State of Hawaii, and for the State of Hawaii to defend and indemnify MLP pursuant to HRS section 198D-7.5. (Attachment 1)

**BACKGROUND:**

The Mokuleia Shoreline Access and Scenic Overlook (otherwise known as "Access Corridor") is a popular beach access with local residents and tourists and receives heavy use. The Access Corridor, which is part of the State Na Ala Hele Trails and Access Inventory, was completed in 1999 and the original MOA between MLP and DLNR was entered into at that time. The original agreement expired in 2004 and was extended to 2009. The Access Corridor was created as the result of an Emergency Medical Technician being injured while performing a rescue in the area. Prior to the construction of the current Access Corridor, the old route was a steep dirt pathway. This agreement, a continuation of a prior ten year agreement, has been updated to reflect new language under section 198D-7.5, HRS. Section 198D-7.5 allows the State to enter into agreements to defend the owner, its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners, from claims made by public users of the owner's land. It will also provide indemnification for property losses incurred due to

public use, subject to the following provisions: 1) the attorney general (AG) may review any claim; 2) the AG may refer a claim to the Chairperson of the Board of Land and Natural Resources for informal resolution subject to the terms of an agreement; 3) all claims of property loss that are subject to the terms of an agreement shall be reviewed in the first instance by the chairperson for resolution as provided for in an agreement. The chairperson may compromise or settle claims for property loss from the trail and access program special funds for an amount not exceeding \$10,000 per fiscal year, and the chairperson may pay claims for property loss up to this amount without the review of the AG; 4) Upon referral by the chairperson, the AG, shall make determinations of whether a claim for property loss would or would not be subject to the terms of an agreement; and 5) claims greater than \$10,000 per fiscal year shall be subject to appropriation and allotment.

This agreement does not allow an action to be brought against the State solely because of the existence of this agreement and any action defended by the State pursuant to an agreement shall be deemed an action against the owner. No judgment shall be executed against an owner, its affiliates, and their respective heirs, executors, administrators, representative, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents and partners until the legislature has reviewed and approved the judgment.

#### DISCUSSION:


The primary objective of managing and maintaining the Mokuleia Shoreline Access and Scenic Overlook is to preserve safe public access to and from the shoreline. The Mokuleia Shoreline Access and Scenic Overlook is one of the only access routes along the rugged shoreline and ADA accessible overlooks.

It is at the State's discretion to enter into these types of agreements, in which the State of Hawaii will defend and indemnify other land owners to secure public access to beaches, shorelines, parks, trails or other public recreation areas. Maui Land and Pineapple Company, Inc. is the landowner for the Mokuleia Shoreline Access and Scenic Overlook and will cooperatively manage the area with the Department of Land and Natural Resources, Division of Forestry and Wildlife. MLP will receive no profit from this agreement which will oblige MLP to cooperatively manage and maintain the public access with DLNR, while only requesting that the State defend and indemnify against liability caused by the public's use. The Mokuleia Shoreline Access and Scenic Overlook were designed and managed in such a way as to provide safe use for the public and not create a high liability risk. Since the creation of the access and overlook, there have not been any claims against the State concerning this area. This MOA is needed to continue the safe public access across private lands and fulfills a service to the public.

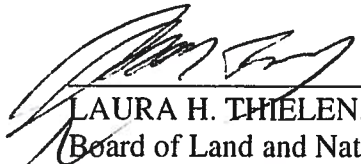
#### RECOMMENDATION:

That the Board authorizes the Chairperson to execute a Memorandum of Agreement between Maui Land and Pineapple Company, Inc. and the State of Hawaii Department of Land and Natural Resources as described above and consistent with provisions in Section 198D-7.5. HRS, subject to approval as to form of the Memorandum of Agreement by the Attorney General's office.

Respectfully submitted,

  
\_\_\_\_\_  
PAUL J. CONRY, Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
LAURA H. THIELEN, CHAIRPERSON  
Board of Land and Natural Resources

Attachment 1: Draft MOA between MLP and DLNR Forestry & Wildlife Division

## REGULAR SYSTEM

**Maui Land & Pineapple Company, Inc.**  
**P.O. Box 187**  
**Kahului, HI 96732**

Tax Map Key No.: (2) 4-2-004:032 (por.)

This Memorandum of Agreement made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, whose address is: P.O. Box 187 Kahului, Hawaii, 96732 ("Owner") and the State of Hawaii, Board of Land and Natural Resources, by its Department of Land and Natural Resources, Division of Forestry and Wildlife, Na Ala Hele Trails and Access Program ("DLNR") whose address is: 54 South High Street, Room 101 Wailuku, Hawaii, 96793.

WITNESSETH

WHEREAS, pursuant to Section 198D-2, Hawaii Revised Statutes ("HRS"), the Na Ala Hele Trails and Access Program ("Na Ala Hele") within the Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW") is charged with the responsibility to plan, develop, acquire land or rights for public use of land, construct, restore, and engage in coordination activities to implement the statewide trail and access program; and

WHEREAS, Na Ala Hele has listed the Mokuleia Shoreline Access and Scenic Overlook ("Mokuleia Access") at Mokuleia Bay, Ahupuaa of Honolulu, Island of Maui, as part of its Trails and Access Inventory; the Mokuleia Access generally located as shown in Exhibits A and B as attached hereto; and

WHEREAS, the Mokuleia Access, shown in Exhibit C which is attached hereto and incorporated by reference, was constructed in 1999 by DLNR and the Owner on land generally referred to as the Non-exclusive Grant of Easement M-1 access corridor at Tax Map Key no. (2) 4-2-004:032 (por.); and

WHEREAS, while lands in which the Mokuleia Access is located are owned by the Owner, and are primarily subject to the administrative authority of DLNR through their status in the state conservation district; and

WHEREAS, the Owner's public liability risk may be limited to the extent provided pursuant to an agreement with DLNR under Section 198D-7.5, HRS, and as a result of the Owner's commitment to assist in construction and maintenance of the Mokuleia Access; and

WHEREAS, periodic maintenance will be required to preserve safe and efficient access for the public on the Mokuleia Access; and

WHEREAS, although the Mokuleia Access is to be a part of the Na Ala Hele statewide trail and access system under DLNR authority, management and maintenance shall be shared by both parties according to the Management Plan attached and incorporated into this document (as Exhibit D); and

WHEREAS, the Owner desires to allow public access along the Mokuleia Access, which is deemed by the parties as being of high importance for public recreational and educational use; and

WHEREAS, DLNR may enter into agreements to defend and indemnify owners of public or private lands to establish public recreational use of trails and accesses as provided for in section 198D-7.5, HRS, and

WHEREAS, the Owner desires to enter into an agreement under the provisions of 198D-7.5, HRS, to be defended and indemnified; and

WHEREAS, public use of the Mokuleia Access would be of mutual benefit to both parties and the general public:

NOW, THEREFORE, it is mutually agreed by the parties as follows:

DLNR agrees to:

1. Install mutually approved Na Ala Hele signs along the Mokuleia Access informing public users that:
  - a. Access is provided through an agreement between DLNR and Owner; and
  - b. Maintenance and management of the Mokuleia Access is a cooperative effort through this agreement between the Owner and DLNR.
2. Install signs concerning trail use rules, restrictions, and safety as and where it deems advisable.
3. Share maintenance of associated signs and structures, with the Owner as described in the attached Management Plan (Exhibit D).
4. Notify the Owner within two working days upon discovering damage to or disrepair of the Owner's property.
5. Notify the Owner within two working days upon discovering any hazardous or unsafe conditions on or within twenty-five (25) feet of the access corridor.
6. Defend and indemnify the Owner against any loss, liability or claims made by public users of the owner's land for property losses incurred due to the public's use of the Mokuleia Access, as provided by law and Chapter 198D, HRS, except that the Owner shall be liable to the State for damage or claims to the extent resulting from the negligent act or omission of the Owner or its authorized representatives. This indemnity shall be effective only so long as the Memorandum of Agreement is in effect and the public has access on the Mokuleia Access.

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Owner agrees to:

1. Permit general public pedestrian access along the Mokuleia Access.
2. Permit the passage of emergency medical services personnel and equipment along the Mokuleia Access and assist during search and rescue activities.
3. Allow DLNR to place mutually approved informational signs on or adjacent to the Mokuleia Access on the Owner's lands, provided however, the Owner agrees DLNR may place signs concerning (but not limited to) access use rules, restrictions, and safety as and where it deems advisable.
4. Assist DLNR in maintaining the Mokuleia Access as described in the attached Management Plan (Exhibit D).
5. Grant DLNR the authority to close public access along the Mokuleia Access upon DLNR's assessment that the condition of the access or the shoreline conditions are considered too hazardous for continued public use.
6. Notify DLNR within two working days whenever the Owner becomes aware of unsafe conditions of the Mokuleia Access directly or through the public or the Owner's representatives.
7. Notify DLNR within two working days upon discovering damage to or disrepair of DLNR's property (i.e., Na Ala Hele signs).
8. Notify DLNR within two working days upon discovering any hazardous or unsafe conditions on and within twenty-five (25) feet of the Mokuleia Access.

**THE PARTIES FURTHER AGREE THAT:**

1. This Memorandum of Agreement will remain in effect for a period of five (5) years, with an option to extend this agreement for an additional five (5) years, and may be altered only by written agreement of the parties.
2. This Memorandum of Agreement may be terminated by the Owner or DLNR upon sixty (60) days written notice to the other party.
3. All notices, bills, demands, payments, accounting or other communications that any party desires or is required to give under the provisions of the Memorandum of Agreement shall be given in writing and shall be deemed to have been given if hand delivered, sent by facsimile, sent electronically, or if mailed by United States mail, prepaid to the party or parties at the address noted below or such other address as a party may designate in writing from time to time:

**Owner:**

Maui Land & Pineapple Company, Inc.  
P.O. Box 187  
Kahului, HI 96733  
Attn: Land & Property Manager  
Tel: 808-665-6458

**DLNR:**

Division of Forestry & Wildlife  
Na Ala Hele Program  
54 South High Street, Room 101  
Wailuku, HI 96793  
Tel: 808-984-8100

IN WITNESS WHEREOF, Maui Land & Pineapple Company, Inc. and the State of Hawaii, by its Board of Land and Natural Resources have executed this Memorandum of Agreement as of the date first above written.

MAUI LAND & PINEAPPLE  
COMPANY, INC.

By \_\_\_\_\_  
John Durkin  
Its CFO

By \_\_\_\_\_  
Ryan Churchill  
Its President & COO

Approved by the Board of Land and  
Natural Resources at its meeting on:

\_\_\_\_\_

STATE OF HAWAII  
DEPARTMENT OF LAND AND  
NATURAL RESOURCES

By \_\_\_\_\_  
Laura H. Thielen  
Its Chairperson  
Board of Land and Natural  
Resources

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General



)

)

)

Name:

**My commission expires:**

# Pages: \_\_\_\_\_

## Circuit

Stamp  
or  
Seal

Date \_\_\_\_\_

## EXHIBITS

- A – Location Map
- B- Tax Map Key
- C – Boundary Survey/Plan Map (Non-exclusive Grant of Easement)
- D – Management Plan

## EXHIBIT D

### MOKULEIA BAY PUBLIC ACCESS MANAGEMENT PLAN

This Management Plan is attached to the Memorandum of Agreement for the Mokuleia Bay Public Access. This Plan shall exist for the life of the Memorandum of Agreement or until such time as the State of Hawaii may acquire the property containing the Mokuleia Access and release the Owner from its responsibilities.

#### Objective

The primary objective of managing and maintaining the Mokuleia Access (otherwise known as "Access Corridor") is to preserve safe public access to and from the shoreline. This is provided the demands of management and maintenance are within the operational capabilities of the Owner and the State.

#### Conditions/Restrictions

Public access along the Mokuleia Access may be restricted at any time by the Owner or by DLNR as determined or demonstrated that closure will preserve public safety. At any time, if either party determines that conditions are hazardous to the public, the Mokuleia Access will be closed until the hazardous conditions cease or can be corrected by DLNR and/or the Owner.

#### Signs

All signs installed by DLNR will have a brown background with yellow lettering unless otherwise agreed to by both parties.

The standard Na Ala Hele sign with logo and trail name will be placed at the entry to the Mokuleia Access. Another mutually approved sign will be placed at the Mokuleia Access entry acknowledging cooperation between the Owner and DLNR-DOFAW-Na Ala Hele (NAH).

#### Management and Maintenance

##### Owner:

The Owner is solely responsible for preserving open and unobstructed view planes to the ocean and shoreline from the Scenic Overlook, which is identified in Exhibit C as the "Viewing Platform."

The Owner will regularly inspect the structures located within the Access Corridor. Actions taken by the Owner will be performed without cost to DLNR.

View planes maintained by the Owner will be composed of unobstructed views from the Scenic Overlook of the shoreline, Marine Life Conservation District waters, and shoreline cliff area. The Owner will regularly trim and/or remove obscuring vegetation or other view plane obstructions. If it is determined the cliff-side area below becomes unstable resulting from the Owners actions, the Owner will suspend its activities, consult DLNR, and implement alternate actions.

The Owner will inspect the Access Corridor, and other attendant structures and signs quarterly, or as needed.

The Owner will continue to maintain a barrier fence along Honoapiilani Highway in the vicinity of the Mokuleia Access. The barrier fence will not obstruct the view planes for users of the Scenic Overlook.

NAH:

NAH will place and maintain mutually approved informational signs on or along the Mokuleia Access or on the Owner's lands adjacent to it. The Owner agrees that NAH may place signs concerning rules and restriction and safety as or where it deems advisable.

NAH will regularly inspect and clear the Access Corridor of any obstructive vegetation or natural debris and remove rubbish from it quarterly, or as needed. The Access corridor is defined for management plan purposes as being approximately ten (10) feet wide and ten (10) feet high.

NAH may engage its employees, volunteers, individuals or organizations to assist with maintaining and managing the Mokuleia Access.

NAH shall not be responsible for maintaining the Owner's private property beyond the Access Corridor.

BOTH PARTIES:

The responsibility of maintaining in good repair the structure of the Mokuleia Access shall be the responsibility of DLNR-DOFAW and the Owner.

The responsibility of maintaining in good repair the Mokuleia Access, structures within the Mokuleia access, drainage, and other structures and signs shall be the responsibility of DLNR-DOFAW-Na Ala Hele and the Owner.

Should unusual circumstances dictate unscheduled repairs or maintenance necessitating closure of either the Access Corridor or Scenic Overlook, DLNR-DOFAW and the Owner shall consult each other and such actions will be coordinated for

efficiency and to minimize closure of the public access for the shortest time possible and to accommodate each parties' work schedule.

Term

This Management Plan will remain in effect for the duration of the Memorandum of Agreement, or unless sooner terminated by mutual written consent.

